

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA

vs.

**ROMEO WALTER, and
KENAN THOMAS,**

Defendants.

Case No. 3:20-cr-39

**GOVERNMENT’S MOTION TO CONTINUE TRIAL
AND EXCLUDE TIME UNDER THE SPEEDY TRIAL ACT**

The United States of America, by and through Delia L. Smith, United States Attorney for the District of the Virgin Islands, and Kyle Payne, Assistant United States Attorney, hereby respectfully moves this Honorable Court for an order continuing the trial date set for April 8, 2024, and to exclude time under the Speedy Trial Act (18 U.S.C. § 3161) for excludable delay for the reasons set forth below.

The defendants are charged with a series of federal and territorial violations regarding the possession of firearms. Trial is scheduled to begin on April 8, 2024. On January 26, 2024, the United States’ Attorney’s Office for the District of the Virgin Islands sent a subpoena to DNA Labs International, the employer for the government’s DNA expert, Daniel Aguilar, to secure his presence for the then trial date of March 4, 2024. When the Court ordered the trial continued on February 9, 2024, to April 8, 2024, ECF No. 261, the undersigned contacted Mr. Aguilar regarding the re-scheduled trial date. Mr. Aguilar relayed that he is moving from Florida to California during April and is driving across country during the week of April 8th. Therefore, he is unable to travel to St. Thomas for trial the same week during his relocation which will take a few weeks since he

is driving. Mr. Aguilar will be relocated and available after April 22, 2024. Mr. Aguilar is a Senior DNA Analyst who performed the DNA testing on the firearms seized on April 8, 2020, that are the subject of the instant charges. As the government's expert witness who will testify to DNA laboratory results and provide an opinion that DNA profiles obtained from the firearms match known DNA profiles of defendants Romeo Walter and Kenan Thomas, he is an essential witness whose testimony is necessary for the government to prove possession of the firearms; thus, its case-in-chief. Mr. Aguilar further related that he would be available starting April 22nd, but not available the week of May 6th, and available the rest of the year after the week of May 6th.

The United States Court of Appeals for the Third Circuit has recognized that "whether or not a case is 'unusual' or 'complex,' an 'ends of justice' continuance may in appropriate circumstances be granted." *United States v. Fields*, 39 F.3d 439, 444 (3d Cir. 1994). Although the Speedy Trial Act requires that defendants be tried within seventy days of indictment, the requested excludable period of delay in this matter is necessary to enable an essential witness to testify at trial. *See* 18 U.S.C § 3161(h)(3)(A). Relevant here, courts have granted continuances due to witness unavailability. *See United States v. Paz*, No. 2019-39, 2019 U.S. Dist. LEXIS 187900 (D.V.I. Oct. 30, 2019) (granting a continuance where two essential witnesses were on emergency deployment); *see also United States v. James*, No. 18-CR-216 (SRN/HB), 2019 U.S. Dist. LEXIS 25093, at *4 (D. Minn. Feb. 15, 2019) (granting a continuance based on an essential witness's preexisting travel plans); *United States v. Meyer*, 803 F.2d 246, 247 (6th Cir. 1986) (upholding a continuance where an essential witness was unavailable due to a wedding).

The United States respectfully moves this Honorable Court for a continuance and to toll this time period for Speedy Trial Act purposes. Such an order is necessary, as the Speedy Trial Act excludes the time only if the Court "sets forth, in the record of the case," the reasons for its

“ends of justice” determination. 18 U.S.C. § 3161(h)(7)(A). The undersigned informed defense counsels of the United States’ intent to file a motion to continue trial in this matter. Defense counsel for Romeo Walter, Lorenzo Palomares, has no objections to proposing a new trial date. Defense counsel for Kenan Thomas, Kia Sears, stated that she is unable to take a position as she has not had an opportunity to speak with her client who is currently detained in Guaynabo MDC. The United States further provides the weeks of May 13th, May 27th (Memorial Day), and June 3rd as potential trial dates.

Respectfully submitted this the 20th day of March 2024.

DELIA L. SMITH
UNITED STATES ATTORNEY

By: s/ Kyle Payne
Kyle Payne
ASSISTANT U.S. ATTORNEY
(340) 774-5757
Kyle.Payne@usdoj.gov